

TENNESSEE ETHICS COMMISSION
ADVISORY OPINION 07-03
July 31, 2007
Page 1 of 2

Interpretation of § T.C.A. 3-6-304(j)
with respect to whether a lobbyist
make may campaign contributions
in her capacity as an as an officer of a
political action committee.

INTRODUCTION:

The following Advisory Opinion is written in response to a request from Ms. Marylee A. Booth of the Tennessee Oil Marketers Association (“TOMA”) with regard to whether a lobbyist may make campaign contributions to legislative officials or candidates in her capacity as an officer of a political action committee (“PAC”).

In response to the above question, the Tennessee Ethics Commission (“Commission”) concludes that it is not permissible for a lobbyist to make campaign contributions to legislative officials and candidates in her capacity as an officer of a PAC because, under the statute, there is a blanket prohibition on lobbyists contributing to certain political campaigns.

BACKGROUND:

TOMA is a state-wide trade association with a mission to advance the interests and ensure the viability of Tennessee’s oil marketers through representation, information and education. It is an employer of a lobbyist. Ms. Booth serves as TOMA’s Executive Director and in-house lobbyist. She also supervised the work of TOMA’s contract lobbyists. Additionally, TOMA has a PAC for which Ms. Booth serves as secretary/treasurer. Her inquiry concerns her ability to make campaign contributions in her capacity as an officer of the PAC.

DISCUSSION:

Can a lobbyist make campaign contributions in her capacity as an officer of a PAC?

T.C.A. § 3-6-304(j) states the following:

No lobbyist shall offer or make any campaign contribution, including in-kind contribution, to or on behalf of the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative.

T.C.A § 3-6-304(i) provides that:

No employer of a lobbyist or multicandidate political campaign committee controlled by an employer of a lobbyist shall make any campaign contributions to a candidate for the office of governor or member of the general assembly during any regular annual session or any extraordinary session of the general assembly.

TENNESSEE ETHICS COMMISSION
ADVISORY OPINION 07-03
July 31, 2007
Page 2 of 2

According to the facts provided, Ms. Booth is TOMA's in-house lobbyist and serves as an officer of its PAC and, in that latter capacity, wishes to make campaign contributions to political candidates.

T.C.A. § 3-6-304(j) contains no exceptions and thus, it appears that the Legislature intended to ban all campaign contributions by lobbyists to certain state officials and candidates to those positions. In fact, allowing a lobbyist to take off his/her "lobbying hat" would have the effect of circumventing the law thereby permitting a lobbyist to sit as officer or contact person of his or her employer's PAC, thereby making contributions to state officials and candidates that would otherwise be prohibited under the statute.

The legislative presumption that a "lobbyist is a lobbyist" finds support in T.C.A. § 3-3-304(m) which provides that "No lobbyist shall serve as a member of any board, commission or governmental entity of state government having jurisdiction to regulate the business endeavors or professional activities of any employer of the lobbyist; nor shall any lobbyist serve as a member of the state election commission or any county election commission . . ." The presumption here is that the Legislature considered that it is the lobbyist's status as such that prohibits the lobbyist from serving and that a lobbyist cannot "take off his or her lobbyist hat" under these circumstances.

The Commission's Opinion does not in any way effect the ability of TOMA or its PAC, as an employer of a lobbyist or as a PAC controlled by an employer, from making campaign contributions when the Legislature is out of session provided that the campaign contribution does not come from one of its officers who is also a registered lobbyist.

CONCLUSION:

The Commission concludes that a lobbyist cannot make campaign contributions when serving in her capacity as an officer of a PAC.

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